

REMARKS / DISCUSSION OF ISSUES

Claims 1-16 are pending in the application.

The applicants thank the Examiner for acknowledging the claim for priority and receipt of certified copies of all the priority documents and for determining that the drawings are acceptable.

Claims are amended for non-statutory reasons: to correct one or more informalities, remove figure label numbers, and/or to replace European-style claim phraseology with American-style claim language. Claims 1-13 and 15-16 are not narrowed in scope and no new matter is added.

New dependent claims are added to at least partially restore the original range of claims that existed before multiple dependencies were removed in the preliminary amendment. No new matter is added.

The Office action rejects claim 14 under 35 U.S.C. 101. The Examiner's reconsideration of this rejection is requested in view of the amendment to claim 14.

The Office action rejects claims 1-2 and 5-16 under 35 U.S.C. 102(b) over Vishlitzky et al. (USP 5,737,747, hereinafter Vishlitzky). The applicants respectfully traverse this rejection.

MPEP 2131 states:

"A claim is anticipated only if *each and every element* as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The *identical invention* must be shown in as *complete detail* as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Vishlitzky fails to teach determining an upper boundary for a number of allocation units involved for a data handling request, fails to teach determining an upper boundary for a number of storage device requests by multiplying the number of data handling requests and the upper boundary of the number of allocation units involved, and fails to teach determining an upper boundary for an amount of time consumed by execution of the data handling requests during the data handling period by determining an amount of time needed for execution of the upper bound for the number of storage device requests, as specifically claimed in claim 1, upon which claims 2-12 and 14-16 depend. Claim 13 includes similar features.

Vishlitzky does not distinguish between data handling requests and storage device requests, and thus cannot be said to determine a number of storage device requests based on a number of data handling requests and subsequently determining a time consumed by the data handling requests based on the determined number of storage device requests, as taught and claimed by the applicants.

The Office action asserts that Vishlitzky teaches determining an upper boundary for a number of allocation units involved for data handling requests at column 12, line 56. The applicants respectfully disagree with this assertion. At the cited text, Vishlitzky teaches:

"Weights may be assigned to real-time tasks to allocate and guarantee bandwidth averaged over the maximum service delay, R." (Vishlitzky, column 12, lines 55-57.)

As is clearly evident, at the cited text, Vishlitzky does not teach determining an upper boundary, and specifically fails to teach determining an upper boundary for allocation units. The Office action asserts that because Vishlitzky uses the term "bandwidth", this is equivalent to teaching determining an upper boundary for a number of allocation units involved for data handling requests. This is incorrect. The claimed allocation units are partitions of a storage device, and the number of allocation units involved for a data handling request indicates the amount of storage used in the storage unit for the data handling request. Bandwidth does not measure

an amount of storage, and has no bearing of a determination of the amount of storage used for a data handling request.

The Office action further asserts that Vishlitzky teaches determining an upper boundary for a number of storage device requests by multiplying the number of data handling requests and the upper boundary of the number of allocation units involved at column 12, line 60. The applicants respectfully disagree with this assertion. At the cited text, Vishlitzky teaches:

"If  $W$  denotes the weight given to a real-time task (the number of units of this task, or requests, processed in one round), then the task's steady state throughput is  $(W/R)$  requests per unit time." (Vishlitzky, column 12, lines 57-60.)

As is clearly evident, at the cited text, Vishlitzky does not teach determining an upper boundary, and specifically does not teach determining an upper boundary for a number of storage device requests by multiplying a number of requests by a number of allocation units. Vishlitzky specifically teaches determining a "steady state" (i.e. average) throughput by dividing a number of requests,  $W$ , by a delay parameter,  $R$ . Nowhere in Vishlitzky's determination is the number of allocation units used to determine an upper boundary on the number of storage requests.

The Office action further asserts that Vishlitzky teaches determining an upper boundary for an amount of time consumed by execution of the data handling requests during the data handling period by determining an amount of time needed for execution of the upper bound for the number of storage device requests at column 12, lines 51-54. The applicants respectfully disagree with this assertion. At the cited text, Vishlitzky teaches:

"A maximum service delay is the time it takes to complete one round of real-time tasks scheduling plus the general purpose time quantum." (Vishlitzky, column 12, lines 51-54.)

As is clearly evident, at the cited text, Vishlitzky does not teach determining an amount of time consumed by data handling requests by determining an amount of time needed for execution of an upper bound for the number of storage device requests. At the cited text, Vishlitzky fails to teach how the maximum service delay is determined, and specifically fails to teach that this service delay is determined based on a number of storage device requests.

Because Vishlitzky fails to teach each of the elements of the applicants' independent claims 1 and 13, the applicants respectfully maintain that the rejection of claims 1-2 and 5-16 under 35 U.S.C. 102(b) over Vishlitzky is unfounded, per MPEP 2131, and should be withdrawn.

In view of the foregoing, the applicants respectfully request that the Examiner withdraw the rejections of record, allow all the pending claims, and find the application to be in condition for allowance. If any points remain in issue that may best be resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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